tion on the vendor in what were apparently forced sales,[24] an assignment for the benefit of creditors would seem clearly to raise no implication that the vendor would not later hold himself free to exercise full rights of competition. So the recent case seems correct.

APPLICATION OF THE RULE IN ARCHER'S CASE IN AMERICA. — At common law under the English system of primogeniture there could be only one *heir* existing at any given time.[1] Consequently, when the plural word *heirs* was used in conveyancing, it could only refer to a chain of inheritable succession from a progenitor and could not mean a coexisting class of individuals answering to the description of heirs. *Heirs* came to be the technical word used to limit an estate of inheritance which would follow through the entire structure of descent from the progenitor.[2] Hence, when the situation, illustrated in Shelley's Case,[3] arose, where in the same instrument a remainder was limited to the *heirs* or *heirs of the body* of the donee or grantee of the prior life estate, it was not surprising that the courts, clinging to the technical meaning of the word *heirs*, found an attempt to pass the remainder as if an inheritance from the holder of the life estate.[4] The words were words of limitation, or outline of a structure of descent from the progenitor named, the form alone that of purchase. The remainder was, therefore, read as a fee or fee tail in the ancestor, into which the life estate might merge.[5] Since then the English cases have consistently given effect to the technical meaning of the plural word *heirs* or *heirs of the body* by refusing to consider context inconsistent with the technical legal import.[6]

When the singular word *heir* was used, however, the situation has been different.[7] It could denote a line of descent, if used collectively, or a particular individual, if used singly. With no restrictive context it was

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[24] Jennings *v.* Jennings, [1898] 1 Ch. 378; *in re* David, *supra*; Von Bremen *v.* MacMonnies, *supra*.

[1] See FEARNE, C. R., 10 ed., pp. 181–185; CHALLIS, REAL PROPERTY, 3 ed., p. 221; 14 L. QUART. REV. 98; Burnett *v.* Coby, 1 Barn. 367; Doe *v.* Harvey, B. & C. 610; Jesson *v.* Wright, 2 Bligh 1, at p. 53.

[2] See 1 Coke, 104 *b*; 29 L. R. A. N. S. pp. 1039–1065. *Cf.* CHALLIS, REAL PROPERTY, 238, 242, 166; and note an exceptional case, Mandeville's Case, Coke Litt. 266.

[3] 1 Coke, 93 *b*; reprinted in CHALLIS, REAL PROPERTY, 154; 29 L. R. A. N. S. 968.

[4] *Cf.* 29 L. R. A. N. S. 1006–1007.

[5] See 1 TIFFANY, REAL PROPERTY, § 130; 1 HAYES, CONVEYANCES, 5 ed., 542–546; Van Grutten *v.* Foxwell, [1897] A. C. 658, 668.

[6] Wright *v.* Pierson, 1 Eden 119; Measure *v.* Gee, 5 B. & Ald. 910; Jesson *v.* Wright, 2 Bligh 1; Doe *v.* Harvey, 4 B. & C. 610; Mills *v.* Seward, 1 J. & H. 733; Jordan *v.* Adams, 9 C. B. N. S. 483; Van Grutten *v.* Foxwell, [1897] A. C. 658. Decisions seemingly *contra* have invariably been in cases of wills, where the word *heirs* has clearly been used loosely in a non-technical sense as the equivalent of *children* and the like. See Doe *v.* Lanning, 2 Burr. 1100; Crump *v.* Wooley, 7 Taunt. 362; Doe *v.* Goff, 11 East 668; Bull *v.* Comberbach, 25 Beav. 540; Right *v.* Creber, 5 B. & C. 866. *Cf.* Measure *v.* Gee, 5 B. & Ald. 910. In Doe *v.* Goff, *supra*, Lord Ellenborough said at pp. 671–672: "And the words which follow put it past all doubt that the testator used the words 'heirs of the body' not as words of limitation . . . but as equivalent to *children* or *issue of her body*. . . ." See 1 FEARNE, C. R. 186–197; 1 TIFFANY, REAL PROPERTY, § 132; 10 HARV. L. REV. 66.

[7] See 1 FEARNE, C. R. 150, 178; CHALLIS, REAL PROPERTY, 230; 29 L. R. A. N. S. 1017.

interpreted collectively and Shelley's rule was applied.[8] When used with words clearly inconsistent with the collective sense, it was construed, as in Archer's Case, to designate an individual purchaser.[9]

In America primogeniture has been generally abolished.[10] More than one heir therefore may be in existence at any one time. The plural word *heirs* is not only descriptive of a line of descent, as in England, but may also designate a number of individuals who take as tenants in common. On this ground a recent federal case from Illinois presents the proposition that in America the *heirs of the body* ought to have the same possibilities of construction as the singular form in England.[11] There a deed read, in substance, to Sarah for life and at her death "to the heirs of the body of Sarah, their heirs and assigns." The court followed Archer's Case, and thus construed the deed to give a life estate to Sarah and a contingent fee to the class as tenants in common who should come within the description "heirs of the body" at the death of Sarah.[12] *Ætna Life Ins. Co.* v. *Hoppin* (C. C. A., 7th Circ. Not yet reported).

The proposition is sound unless to-day the word *heirs* (plural), because of the peculiar effect given the plural word in England, has come to imply a stronger idea of inheritance from a progenitor than the singular *heir*. Many courts in America have applied the rule in Shelley's Case to situations very similar to that disclosed in the recent decision.[13] On the other hand, many courts have refused to apply the rule, but they have usually based their decisions on the erroneous ground that the intention of the testator to give the first taker only a life estate made the rule inapplicable.[14] In one former case, however, the difference, dis-

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[8] Richards *v.* Bergavenny, 2 Vern. 324. See the discussion of the rule in Evans *v.* Evans, [1892] 2 Ch. 173. *Cf.* Fuller *v.* Chamier, L. R. 2 Eq. 682.

[9] Archer's Case, 1 Coke, 66 *b*, discussed in 1 FEARNE, C. R., 10 ed., 150, 193. In this case the devise read to Robert for life and afterwards to the next *heir* male of Robert and the *heirs* male of the body of such next *heir* male. The court considered that the reference to heir, in the singular, with the superadded words of limitation, to be a specific description of the person who should be "next heir male" as to donee of a fee tail by purchase. So the rule in Shelley's Case did not apply. Willis *v.* Hiscox, 4 Myl. & Cr. 197; Chamberlayne *v.* Chamberlayne, 6 El. & Bl. 625; Greaves *v.* Simpson, 10 L. T. 448. Archer's Case is distinguished in Minshull *v.* Minshull, 1 Atk. 410, 413; Sayer *v.* Masterman, 1 Ambl. 344, 346; Featherston *v.* Featherston, 3 Cl. & F. 67; Johnson *v.* Rutherford, 3 L. T. 649, 650. *Cf.* White *v.* Collins, Comyn 289.

In like manner non-technical words such as "issue" or "person or persons who shall be heirs at the death of the life tenant" have been construed as an individual person or class. Lodington *v.* Kime, 1 Salk. 224 (issue); Bowles' Case, 11 Co. 79 *b* (issue); Bannester *v.* Lang, 17 L. T. N. S. 137 (issue); Evans *v.* Evans, [1892] 2 Ch. 173 (persons).

[10] ILL. STATUTES, 4202. See Meadowcroft *v.* County, 181 Ill. 504; 1 STIMSON, AM. ST. LAW, 3101, 3107, 3113, 3121, 3134.

[11] See also in lower court, 249 Ill. 406.

[12] The same result could be reached by applying the rule in Shelley's Case, obtaining a fee tail, and then applying the Statute of Entails in Illinois but for the settled construction that the Statute of Entails gives a vested remainder in the children of the life tenant when born. See Winchell *v.* Winchell, 259 Ill. 471, 102 N. E. 823; Moore *v.* Riddell, 259 Ill. 36, 102 N. E. 257; ILLINOIS CONVEYANCING ACT, ch. 30, § 6. See 6 ILL. L. REV. 270; 8 ILL. L. REV. 313; and *cf.* with *In re* Kelso, 69 Vt. 272; Horsley *v.* Hilburn, 44 Ark. 458.

[13] Baughman *v.* Baughman, 2 Yeates (Pa.) 410; Hileman *v.* Bruslaugh, 13 Pa. 251; Hardage *v.* Stroope, 58 Ark. 303, 24 S. W. 490; Brown *v.* Lyon, 6 N. Y. 419; Darmer *v.* Trescott, 5 Rich. Eq. (S. C.) 356.

[14] De Vaughn *v.* Hutchinson, 165 U. S. 566; Earnhart *v.* Earnhart, 127 Ind. 397;

cussed above, between the English and the American law of inheritance has been used as a ground for not applying the rule in Shelley's Case.[15] Such construction, whether advisable or not, is at least possible in America, and certainly affords a basis for distinguishing and reconciling the results of the English and American cases.

As a general proposition, technical meanings for formulas of conveyancing are desirable in order to secure stability of titles.[16] Since the main reasons urged for the adoption of the proposition of the case are simply arguments for abolishing the rule in Shelley's Case altogether,[17] a better result would be gained by legislation than by forced construction by way of exception.

CONSTITUTIONALITY OF THE FEDERAL YACHT TAX. — The Supreme Court has declared the power to tax to rest upon the reciprocal duties of protection and support between the state and the citizen.[1] When the constitutionality of a certain tax is questioned, the basic inquiry becomes whether the taxing power is rendering a *quid* of protection for the *quo* which it receives, in the shape of the tax, from the taxed object.[2] Obviously a state may tax all the property within its borders.[3] A like power extends to all persons domiciled therein.[4] While a poll tax is the simplest method of personal taxation,[5] taxes are more often imposed in proportion to wealth and power.

Is it due process of law to include property outside of a state or of the United States in estimating this wealth and power? Even in our common-law conception of territorial sovereignty, it may be said that the benefits conferred by the state government do not stop at the borders. The law of the state of domicil determines legitimacy,[6] the devolution of property at death,[7] the right to act as a corporation,[8] all of which are effective beyond the state line. State law confers property rights given effect to everywhere.[9] It must be recognized, however, that in the end the benefit depends upon the foreign state or federal govern-

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Westcott *v.* Meeker, 144 Ia. 311, 122 N. W. 964, criticized in 23 HARV. L. REV. 313; State *ex rel.* Farley *v.* Welsh, 162 S. W. (Kan.) 637; Hamilton *v.* Wentworth, 58 Me. 101; Carnedy *v.* Haskins, 54 Mass. 389; Peer *v.* Hennion, 77 N. J. L. 693; Lemacks *v.* Glover, 1 Rich. Eq. (S. C.) 141. It is to be noted that these are all cases of wills where greater scope in construction is usually allowed. 1 TIFFANY, REAL PROPERTY, § 132; 29 L. R. A. N. S. 1038.

[15] Tucker *v.* Adams, 14 Ga. 548; 28 L. QUART. REV. 148.

[16] See 1 FEARNE, C. R. 201; 12 HARV. L. REV. 64.

[17] A list of the states which have abolished the rule in Shelley's Case will be found in 1 STIMSON, AM. ST. LAW, § 1406.

[1] Union Transit Co. *v.* Ky., 199 U. S. 194, 202, 204; State Tax on Foreign-Held Bonds, 15 Wall. [U. S.] 300, 302. "The theory of all taxation is that taxes are imposed as a compensation for something received by the taxpayer." Dalrymple *v.* Milwaukee, 53 Wis. 178, 185.

[2] GRAY, CONSTITUTIONAL LIMITATIONS ON THE TAXING POWER, § 168 a.

[3] GRAY, CONSTITUTIONAL LIMITATIONS ON THE TAXING POWER, §§ 72, 73.

[4] JUDSON ON TAXATION, §§ 414, 415.

[5] COOLEY ON TAXATION, 3 ed., 28.

[6] Scott *v.* Key, 11 La. Ann. 232.

[7] Lawrence *v.* Kitteridge, 21 Conn. 576.

[8] Bank of Augusta *v.* Earle, 13 Pet. (U. S.) 519.

[9] Green *v.* Van Buskirk, 7 Wall. (U. S.) 139.